

AMENDED IN ASSEMBLY MARCH 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 358

Introduced by Assembly Member Jackson

February 11, 2003

An act to amend Sections 1419, 1420, and 1422 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 358, as amended, Jackson. Health facilities: licensing.

Existing law requires the State Department of Health Services to administer provisions relating to the licensing of long-term health care facilities. Existing law also requires the department to establish a centralized consumer response unit in the Licensing and Certification Division of the department that responds to consumer inquiries and complaints.

Existing law requires ~~that the department~~, upon receipt of a written or oral complaint, ~~the department is required~~ to assign an inspector to make a preliminary review and promptly inform the complainant on the department's proposed course of action.

This bill would require the department to notify the complainant of the department's proposed course of action within 10 working days of receipt of the complaint. This bill would also require that a final determination of the complaint be completed within ~~30~~ 40 working days of receipt of the complaint by the department. *The bill would authorize the department to extend this period by an additional 30 days for good cause.*

This bill would make other conforming changes in these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1419 of the Health and Safety Code is
2 amended to read:
3 1419. (a) The department shall establish a centralized
4 consumer response unit within the Licensing and Certification
5 Division of the department to respond to consumer inquiries and
6 complaints.
7 (b) Upon receipt of consumer inquiries, the unit shall offer
8 assistance to consumers in resolving concerns about the quality of
9 care and the quality of life in long-term health care facilities.
10 This assistance may include, but shall not be limited to, all of the
11 following:
12 (1) Offering to provide to consumers education and
13 information about state licensing and federal certification
14 standards, resident rights, name and address of facilities, referral
15 to other entities as appropriate, and facility compliance history.
16 (2) Offering to participate in telephone conference calls
17 between consumers and providers to resolve concerns within the
18 scope of the authority of the department. If the inquiry or concern
19 is determined to be a complaint as defined by subdivision (f) of
20 Section 1420 it shall be handled pursuant to the complaint
21 investigation process set forth in Section 1420.
22 (3) Initiating onsite investigations in response to oral or written
23 complaints made pursuant to this section if the unit determines that
24 there is a reasonable basis to believe that the allegations in the
25 complaints describe one or more violations of state law by a
26 long-term care facility.
27 (c) Nothing in subdivision (a) or (b) shall preclude the
28 department from taking any or all enforcement actions available
29 under state or federal law.
30 (d) Any person may request an inspection of any long-term
31 health care facility in accordance with this chapter by giving to the
32 department oral or written notice of an alleged violation of
33 applicable requirements of state law. Any written notice may be
34 signed by the complainant setting forth with reasonable
35 particularity the matters complained of. Oral notice may be made



1 by telephone or personal visit. Any oral complaint shall be reduced
2 to writing by the department. The substance of the complaint shall
3 be provided to the licensee no earlier than at the commencement
4 of the inspection.

5 (e) Neither the substance of the complaint provided the
6 licensee nor any copy of the complaint or record published,
7 released, or otherwise made available to the licensee shall disclose
8 the name of any individual complainant or other person mentioned
9 in the complaint, except the name or names of any duly authorized
10 officer, employee, or agent of the department conducting the
11 investigation or inspection pursuant to this chapter, unless the
12 complainant specifically requests the release of the name or names
13 or the matter results in a judicial proceeding.

14 SEC. 2. Section 1420 of the Health and Safety Code is
15 amended to read:

16 1420. (a) (1) Upon receipt of a written or oral complaint, the
17 department shall assign an inspector to make a preliminary review
18 of the complaint and shall notify the complainant within two
19 working days of the receipt of the complaint of the name of the
20 inspector. Unless the department determines that the complaint is
21 willfully intended to harass a licensee or is without any reasonable
22 basis, it shall make an onsite inspection or investigation within 10
23 working days of the receipt of the complaint. In any case in which
24 the complaint involves a threat of imminent danger of death or
25 serious bodily harm, the department shall make an onsite
26 inspection or investigation within 24 hours of the receipt of the
27 complaint. In any event, the complainant shall be informed within
28 10 working days of receipt of the complaint of the department's
29 proposed course of action and of the opportunity to accompany the
30 inspector on the inspection or investigation of the facility. Upon
31 the request of either the complainant or the department, the
32 complainant or his or her representative, or both, may be allowed
33 to accompany the inspector to the site of the alleged violations
34 during his or her tour of the facility, unless the inspector
35 determines that the privacy of any patient would be violated
36 thereby.

37 (2) When conducting an onsite inspection or investigation
38 pursuant to this section, the department shall collect and evaluate
39 all available evidence and may issue a citation based upon, but not
40 limited to, all of the following:

1 (A) Observed conditions.

2 (B) Statements of witnesses.

3 (C) Facility records.

4 (3) A final determination as a result of the inspection or
5 investigation of the complaint shall be completed within ~~30~~ 40
6 working days of receipt of the complaint by the department. *For*
7 *good cause, the department may extend this period by an*
8 *additional 30 days.* Within 10 working days of the completion of
9 the complaint investigation, the department shall notify the
10 complainant and licensee in writing of the department's
11 determination as a result of the inspection or investigation.

12 (b) Upon being notified of the department's determination as
13 a result of the inspection or investigation, a complainant who is
14 dissatisfied with the department's determination, regarding a
15 matter which would pose a threat to the health, safety, security,
16 welfare, or rights of a resident, shall be notified by the department
17 of the right to an informal conference, as set forth in this section.
18 The complainant may, within five business days after receipt of the
19 notice, notify the director in writing of his or her request for an
20 informal conference. The informal conference shall be held with
21 the designee of the director for the county in which the long-term
22 health care facility which is the subject of the complaint is located.
23 The long-term health care facility may participate as a party in this
24 informal conference. The director's designee shall notify the
25 complainant and licensee of his or her determination within 10
26 working days after the informal conference and shall apprise the
27 complainant and licensee in writing of the appeal rights provided
28 in subdivision (c).

29 (c) If the complainant is dissatisfied with the determination of
30 the director's designee in the county in which the facility is
31 located, the complainant may, within 15 days after receipt of this
32 determination, notify in writing the Deputy Director of the
33 Licensing and Certification Division of the department, who shall
34 assign the request to a representative of the Complainant Appeals
35 Unit for review of the facts that led to both determinations. As a
36 part of the Complainant Appeals Unit's independent investigation,
37 and at the request of the complainant, the representative shall
38 interview the complainant in the district office where the
39 complaint was initially referred. Based upon this review, the
40 Deputy Director of the Licensing and Certification Division of the

1 department shall make his or her own determination and notify the
2 complainant and the facility within 30 days.

3 (d) Any citation issued as a result of a conference or review
4 provided for in subdivision (b) or (c) shall be issued and served
5 upon the facility within three working days of the final
6 determination, unless the licensee agrees in writing to an extension
7 of this time. Service shall be effected either personally or by
8 registered or certified mail. A copy of the citation shall also be sent
9 to each complainant by registered or certified mail.

10 (e) A miniexit conference shall be held with the administrator
11 or his or her representative upon leaving the facility at the
12 completion of the investigation to inform him or her of the status
13 of the investigation. The department shall also state the items of
14 noncompliance and compliance found as a result of a complaint
15 and those items found to be in compliance, provided the disclosure
16 maintains the anonymity of the complainant. In any matter in
17 which there is a reasonable probability that the identity of the
18 complainant will not remain anonymous, the department shall also
19 notify the facility that it is unlawful to discriminate or seek
20 retaliation against a resident, employee, or complainant.

21 (f) For purposes of this section, “complaint” means any oral or
22 written notice to the department, other than a report from the
23 facility of an alleged violation of applicable requirements of state
24 or federal law or any alleged facts that might constitute such a
25 violation.

26 SEC. 3. Section 1422 of the Health and Safety Code is
27 amended to read:

28 1422. (a) The Legislature finds and declares that it is the
29 public policy of this state to assure that long-term health care
30 facilities provide the highest level of care possible. The
31 Legislature further finds that inspections are the most effective
32 means of furthering this policy. It is not the intent of the
33 Legislature by the amendment of subdivision (b) enacted by
34 Chapter 1595 of the Statutes of 1982 to reduce in any way the
35 resources available to the department for inspections, but rather to
36 provide the department with the greatest flexibility to concentrate
37 its resources where they can be most effective.

38 (b) (1) Without providing notice of these inspections, the
39 department shall, in addition to any inspections conducted
40 pursuant to complaints filed pursuant to Section 1420, conduct

1 inspections annually, except with regard to those facilities which
2 have no class "AA," class "A," or class "B" violations in the past
3 twelve months. The department shall also conduct inspections as
4 may be necessary to assure the health, safety, and security of
5 patients in long-term health care facilities. Every facility shall be
6 inspected at least once every two years. The department shall vary
7 the cycle in which inspections of long-term health care facilities
8 are conducted to reduce the predictability of the inspections.

9 (2) The department shall submit to the federal Department of
10 Health and Human Services on or before July 1, 1985, for review
11 and approval, a request to implement a three-year pilot program
12 designed to lessen the predictability of the long-term health care
13 facility inspection process. Two components of the pilot program
14 shall be (A) the elimination of the present practice of entering into
15 a one-year certification agreement, and (B) the conduct of
16 segmented inspections of a sample of facilities with poor
17 inspection records, as defined by the department. At the
18 conclusion of the pilot project, an analysis of both components
19 shall be conducted by the department to determine effectiveness
20 in reducing inspection predictability and the respective cost
21 benefits. Implementation of this pilot project is contingent upon
22 federal approval.

23 (c) Except as otherwise provided in subdivision (b), the
24 department shall conduct unannounced direct patient care
25 inspections at least annually to inspect physician and surgeon
26 services, nursing services, pharmacy services, dietary services,
27 and activity programs of all the long-term health care facilities.
28 Facilities evidencing repeated serious problems in complying with
29 this chapter or a history of poor performance, or both, shall be
30 subject to periodic unannounced direct patient care inspections
31 during the inspection year. The direct patient care inspections shall
32 assist the department in the prioritization of its efforts to correct
33 facility deficiencies.

34 (d) All long-term health care facilities shall report to the
35 department any changes in the nursing home administrator or the
36 director of nursing services within 10 calendar days of the changes.

37 (e) Within 90 days after the receipt of notice of a change in the
38 nursing home administrator or the director of nursing services, the
39 department may conduct an abbreviated inspection of the
40 long-term health care facilities.

1 (f) If a change in a nursing home administrator occurs and the
2 Board of Nursing Home Administrators notifies the department
3 that the new administrator is on probation or has had his or her
4 license suspended within the previous three years, the department
5 shall conduct an abbreviated survey of the long-term health care
6 facility employing that administrator within 90 days of
7 notification.

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